IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 524 OF 2005

R.P. Banerjee & Ors. ...Petitioners

Versus

The State of Maharashtra & Anr. ...Respondents

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Mr. N.V. Pradhan i/b Mr.T.J. Pandian, Advocate for Petitioners

Mr. S. V. Marwadi i/b D.S. Hatle, Advocate for Respondent No.2.

Mr. D.P. Adsule, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 13TH JUNE, 2005

P. C.:-

1. Heard both sides.

2. The petitioners have prayed for quashing of process issued against them in Case No.277/SS/2004 which is pending in the Court of learned Metropolitan Magistrate, 27th Court, Mulund, Mumbai. In the said case, process has been issued against the petitioners under Sections 138 of Negotiable Instruments Act.

3. For the reasons recorded in my order dated 8th June, 2005 passed in Criminal Application No.645 of 2005 and order dated 13th June, 2005 passed in

Criminal writ petition No. 213 of 2005, the petitioners have an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my view, it would be appropriate that the petitioners prefer revision before the concerned Sessions Court against the order of the Magistrate issuing process.

4. Liberty is granted to the petitioners to prefer revision before the concerned Sessions Court. Looking to the fact that the petitioners are residing at Delhi and considering the age of the petitioners, I am inclined to grant exemption to them in respect of personal appearance before the trial Court till the revision is disposed of by the Sessions Court. The learned advocate for the petitioners undertakes that he will file the necessary revision within four weeks from today and advance notice of which to the respondents i.e. original complainant shall be given five days in advance.

5. The petitioners are also seeking quashing of Bailable warrant which has been issued against them in the said case. The said warrant has been issued by order dated 26.4.2005 as the petitioners were not present in the Court on that day. The exemption application preferred by the learned advocate for the petitioners came to be rejected and the bailable

warrant came to be issued. Looking to the fact that the petitioners did not remain present before the trial Court only on one day and bailable warrant came to be issued against them, I am inclined to set aside the said warrant. In case the revision is rejected by the Sessions Court and the trial starts and thereafter, the petitioners remain absent before the trial Court, then learned Magistrate may pass such orders as he may deem fit and necessary in accordance with law. The petitioners are granted four weeks time to prefer the necessary revision before the Sessions Court.

6. On the necessary revision being preferred by the petitioners before the concerned Sessions Court, the concerned Sessions Court shall dispose of the same on merits after hearing necessary parties.

7. Office to issue an authenticated copy of this order to the parties.

8. Criminal writ petition is disposed of.

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